

# State of South Dakota

EIGHTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2009

195Q0239

## HOUSE BILL NO. 1036

Introduced by: The Committee on Judiciary at the request of the Office of the Secretary of State

1 FOR AN ACT ENTITLED, An Act to revise the uniform commercial code.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 57A-9-516 be amended to read as follows:

4 57A-9-516. (a) Except as otherwise provided in subsection (b), communication of a record  
5 to a filing office and tender of the filing fee or acceptance of the record by the filing office  
6 constitutes filing.

7 ~~(b) Filing does not occur with respect to a record that a filing office refuses to accept~~  
8 ~~because~~ The filing office may refuse to accept a filing if:

9 (1) The record is not communicated by a method or medium of communication  
10 authorized by the filing office;

11 (2) An amount equal to or greater than the applicable filing fee is not tendered; or

12 (3) The filing office is unable to index the record because:

13 (A) In the case of an initial financing statement, the record does not provide a  
14 ~~name for the debtor;~~

15 (i) If the debtor is an individual, the complete name of each individual;



- 1           (ii) If the debtor is an organization, the complete name of the organization;
- 2           (iii) The mailing address for each debtor;
- 3           (iv) If the debtor is an individual, the social security number for each
- 4                 individual;
- 5           (v) If the debtor is an organization, the type of organization;
- 6           (vi) If the debtor is an organization, the jurisdiction of the organization;
- 7           (vii) If the debtor is an organization, the Secretary of State's Office
- 8                 organizational identification number for the organization or an
- 9                 indication that the organization has none;
- 10          (viii) If the debtor is an organization, the internal revenue service taxpayer
- 11                 identification number;
- 12          (ix) The name of either secured party or the assignee, or both;
- 13          (x) The mailing address of either secured party or the assignee, or both; or
- 14          (xi) Whether an individual or organization is an additional secured party or
- 15                 an assignee of secured party if a second name is listed;
- 16          (B) In the case of an a financing statement amendment or correction statement, the
- 17                 record:
  - 18                 (i) Does not identify provide the initial financing statement as required by
  - 19                         § 57A-9-512 or 57A-9-518, as applicable; or number;
  - 20                 (ii) Identifies an initial financing statement whose effectiveness has Has
  - 21                         lapsed under § 57A-9-515 or had been terminated;
  - 22                 (iii) Does not provide the name and mailing address for the secured party;
  - 23                 (iv) Does not provide the name and mailing address for the assignee;
  - 24                 (v) If the debtor is an individual, does not provide the correct legal name



- 1 ~~—————(D) In the case of a record filed or recorded in the filing office described in § 57A-~~  
2 ~~9-501(a)(1), the record does not provide a sufficient description of the real~~  
3 ~~property to which it relates;~~
- 4 ~~—————(4) In the case of an initial financing statement or an amendment that adds a secured~~  
5 ~~party of record, the record does not provide a name and mailing address for the~~  
6 ~~secured party of record;~~
- 7 ~~—————(5) In the case of an initial financing statement or an amendment that provides a name~~  
8 ~~of a debtor which was not previously provided in the financing statement to which~~  
9 ~~the amendment relates, the record does not:~~
  - 10 ~~—————(A) Provide a mailing address for the debtor;~~
  - 11 ~~—————(B) Indicate whether the debtor is an individual or an organization; or~~
  - 12 ~~—————(C) If the financing statement indicates that the debtor is an organization, provide:~~
    - 13 ~~—————(i) A type of organization for the debtor;~~
    - 14 ~~—————(ii) A jurisdiction of organization for the debtor; or~~
    - 15 ~~—————(iii) An organizational identification number for the debtor or indicate that~~  
16 ~~the debtor has none;~~
- 17 ~~—————(6) In the case of an assignment reflected in an initial financing statement under § 57A-9-~~  
18 ~~514(a) or an amendment filed under § 57A-9-514(b), the record does not provide a~~  
19 ~~name and mailing address for the assignee; or~~
- 20 ~~—————(7) In the case of a continuation statement, the record is not filed within the six-month~~  
21 ~~period prescribed by § 57A-9-515(d):~~
  - 22 (c) For purposes of subsection (b):
    - 23 ~~—————(1) A record does not provide information if the filing office is unable to read or decipher~~  
24 ~~the information; and~~

1 ~~(2) A record that does not indicate that it is an amendment or identify an initial financing~~  
2 ~~statement to which it relates, as required by § 57A-9-512, 57A-9-514, or 57A-9-518,~~  
3 ~~is an initial financing statement.~~

4 ~~(d) A record that is communicated to the filing office with tender of the filing fee, but which~~  
5 ~~the filing office refuses to accept for a reason other than one set forth in subsection (b), is~~  
6 ~~effective as a filed record except as against a purchaser of the collateral which gives value in~~  
7 ~~reasonable reliance upon the absence of the record from the files all filings, a record may be~~  
8 ~~refused if the filing office is unable to decipher the information on a record or if the document~~  
9 ~~cannot be legibly scanned.~~

10 Section 2. That § 57A-9-520 be amended to read as follows:

11 57A-9-520. (a) A filing office shall refuse to accept a record for filing for a reason set forth  
12 in § ~~57A-9-516(b)~~ § 57A-9-516 and may refuse to accept a record for filing only for a reason  
13 set forth in § ~~57A-9-516(b)~~ § 57A-9-516.

14 (b) If a filing office refuses to accept a record for filing, it the filing office shall  
15 communicate to the person that presented the record the fact of and reason for the refusal and  
16 the date and time the record would have been filed had the filing office accepted it the record.  
17 The communication must be made at the time and in the manner prescribed by ~~filing office~~  
18 filing office rule but, in the case of a filing office described in § 57A-9-501(a)(2), in no event  
19 more than two business days after the filing office receives the record.

20 (c) A filed financing statement satisfying § 57A-9-502(a) and (b) is effective, even if the  
21 filing office is required to refuse to accept it for filing under subsection (a). However, § 57A-9-  
22 338 applies to a filed financing statement providing information described in § ~~57A-9-516(b)(5)~~  
23 § 57A-9-516 which is incorrect at the time the financing statement is filed.

24 ~~(d) If a record communicated to a filing office provides information that relates to more than~~

1 ~~one debtor, this part applies as to each debtor separately.~~

2 Section 3. That § 57A-9-521 be amended to read as follows:

3 57A-9-521. (a) A filing office that accepts written records may not refuse to accept a written  
4 initial financing statement in the following form and format except for a reason set forth in  
5 ~~§ 57A-9-516(b)~~ § 57A-9-516.

6 (b) A filing office that accepts written records may not refuse to accept a written record in  
7 the following form and format except for a reason set forth in ~~§ 57A-9-516(b)~~ § 57A-9-516.

8 Section 4. That § 57A-9-338 be amended to read as follows:

9 57A-9-338. If a security interest or agricultural lien is perfected by a filed financing  
10 statement providing information described in ~~§ 57A-9-516(b)(5)~~ § 57A-9-516 which is incorrect  
11 at the time the financing statement is filed:

12 (1) The security interest or agricultural lien is subordinate to a conflicting perfected  
13 security interest in the collateral to the extent that the holder of the conflicting  
14 security interest gives value in reasonable reliance upon the incorrect information;  
15 and

16 (2) A purchaser, other than a secured party, of the collateral takes free of the security  
17 interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect  
18 information, the purchaser gives value and, in the case of chattel paper, documents,  
19 goods, instruments, or a security certificate, receives delivery of the collateral.